IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 43 OF 2002.

Haribaba @ Sahil Sharma,
r/o Manali, Himachal
Pradesh, presently
lodged at Central Jail,
Aguada. ... Appellant.

Versus

State of Goa represented
by Officer-in-Charge,
Anjuna Police Station,
Anjuna. ... Respondent.

Mr. V.A. Lawande, Advocate under Legal Aid Scheme for the Appellant

Mr. S.N. Sardessai, Public Prosecutor for the Respondent.

Coram : P.V. HARDAS, J.

Date : 11th July 2003.

ORAL JUDGMENT.

The Appellant/Accused has filed the present appeal challenging his conviction for an offence punishable under section 20(b)(ii) of the N.D.P.S. Act and sentence of rigorous imprisonment of 5 years and fine of Rs. 25,000/-, in default simple imprisonment for 6 months, passed by the Special Judge, N.D.P.S. Court, Mapusa, by Judgment, dated 29th May 2002, in Special Criminal Case No. 13 of 2001.

2. The facts as are necessary for the decision of the appeal are set out hereunder:

On 28th December 2000, P.W.4 Police Inspector Naresh Mhamal, was attached to the Anjuna Police Station as Officer-in-Charge. On the same day he received specific and reliable information that a youth from Manali, aged about 20-25 years, wearing blue colour jeans, white T-shirt and black shoes may come to deliver a consignment of charas at Arpora Bridge at 8.30 p.m.. The name of the said person was disclosed as Haribaba. P.W.4 P.I. Mhamal reduced the said information into writing and a copy thereof was sent to P.W.5 Dy.S.P.Arvind Gawas. The said information is at Exhibit 18. P.W.4, P.I. Mhamal, thereafter, secured the presence of two panchas, P.W.3 Sagar Pomburpekar and one Radhakrishna Vaigankar. The panchas were introduced to the members of the raiding party comprising of Dy.S.P. P.W.5 Gawas, three Police Constables and one Head Constable. The raiding party, thereafter, left for the raid with the two panchas accompanying the Police Officials. One Police Constable was carrying a kit box containing weighing, packing and sealing material and the seal of Anjuna Police Station. The raiding party reached Arpora Baga at about 8.00 p.m.. The police jeep was parked near Neela Cafe, which was at a distance of about 100-150 metres from the bridge. Two groups were formed. One group comprised of P.W.5 Dy.S.P. Gawas, P.W.3 Sagar, and one Police Constable. The other group comprised of P.W.4 P.I. Mhamal, the other panch, P.W.6

Shetgaokar and one Police Constable. Both the groups took their positions at a distance of 15-20 metres from the bridge. At about 8.30 p.m., one person came from the Baga Calangute side towards the bridge. Since the description of the said person matched with the description received earlier by P.W.4 P.I. Mhamal, the said person was surrounded by the members of the raiding party. P.W.4 P.I. Mhamal identified himself to the said person, who, in the trial, has been identified as the accused. On being asked his name, the accused disclosed his name as Haribaba. P.W.4 P.I. Mhamal then disclosed that he had received reliable information that he was carrying drugs. The accused was also informed that he had a right to be searched either before a Magistrate or a Gazetted Officer. The members of the raiding party including the panchas were introduced to the accused and the accused was given an offer to search the members of the raiding party. The accused declined both the offers. P.W.4 P.I. Mhamal then took the folded black colour polythene bag from the hand of the accused and on opening the same found another polythene bag which was found to contain blackish colour substance in the shape of chappati and sticks. Each piece of the substance was individually wrapped in cellophane paper. P.W.4 P.I. Mhamal disclosed to the members of the raiding party that the substance was charas. The substance was weighed and it was found to weigh 575

grams including the polythene bag. The substance was put back in the outer bag and was then put in an envelope and packed and sealed. The said envelope was signed by the two panchas, P.W.5 Dy.S.P. Gawas and P.W.4 P.I. Mhamal. The accused refused to sign on the envelope. The personal search of the accused yielded a wallet containing one railway ticket, an identity card, and some greeting cards. The wallet was packed and sealed in the same manner as that of the substance and signed as earlier. The accused also declined to sign the envelope containing the wallet. A panchanama of the sequence of events was drawn and is at Exhibit 12. The seizure report is at Exhibit 13. P.W.4 P.I. Mhamal then lodged a complaint at Exhibit 15. Vide Exhibit 16, P.W.4 P.I. Mhamal deposited the sealed articles with P.W.6 Shetgaokar. An intimation under Section 57 of the N.D.P.S. Act, vide Exhibit 17 was given by P.W.4 P.I. Mhamal to his superior. P.W.4 P.I. Mhamal then prepared a letter for being sent to the Director of Food and Drugs Administration enclosing the specimen seal sent through Superintendent Crime Branch, vide Exhibit 6. Exhibit 9 is the forwarding letter.

3. P.W.2 P.S.I. Krishna Shetgaonkar received the sealed envelope and the letter at Exhibit 9 on 2nd January 2001. P.W.2 P.S.I. Krishna has acknowledged the receipt on Exhibit 9. The carrier was P.W.6

Shetgaokar. P.W.2 P.S.I. Krishna kept the articles received in a steel cupboard under lock and key and then forwarded the articles for analysis. The Office of the Director of Food and Drugs Administration received the articles on 2nd January 2001. The seals tallied with the specimen seal impressions. P.W.1 Mahesh Kaissare analysed the drug sent for analysis and by his report at Exhibit 7 confirmed the same to be charas. On completion of the investigation a charge-sheet against the accused came to be filed.

4. The learned Special Judge, N.D.P.S. Court, Mapusa, Goa, vide Exhibit 3 framed a charge against the accused for an offence punishable under Section 20(b)(ii) of the N.D.P.S. Act. The accused pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 6 witnesses. The learned trial Judge, on consideration of the evidence adduced by the prosecution, recorded a finding of guilt against the accused and sentenced him as aforestated.

5. Mr. Lawande, learned counsel appointed for the appellant/accused, who has very ably argued the appeal, has urged that (1) the evidence of the prosecution regarding the safe keeping of the sealed narcotic was not satisfactory and, therefore, tampering of the seals cannot be ruled out and (2) there was

non-compliance of Section 50 of the N.D.P.S. Act. Mr. Sardessai, learned Public Prosecutor, has submitted that the evidence of the prosecution completely rules out any possibility of the sample being tampered with and that the provisions of Section 50 of the N.D.P.S. Act have been complied with.

6. In respect of the first submission, the learned counsel for the appellant/accused has referred to the evidence of P.W.6 Shetgaokar. P.W.6 Shetgaokar in his evidence states that on 28th December 2000 P.W.4 P.S.I. Mhamal had handed over to him one sealed envelope containing 575 grams of charas and another envelope containing the other articles. He had made an entry in the muddemal register. P.W.6 Shetgaokar has further stated: "On the next day PSI Mhamal prepared a letter to the crime branch CID Panaji and collected the 2 sealed envelopes from me which I personally carried with me to his office. As the dealing hand in his office was not available, I came back with the sealed envelope and made a station diary to that effect." He has further stated that on 2nd January 2001 a sealed envelope containing the drug was handed over to P.W.4 P.I. Krishna and he had obtained an acknowledgement from P.W.2. P.S.I. Shetgaonkar. In the cross-examination he has admitted "I am not in a position to say who had carried the sealed envelope with

the letter to the addressed to the lab. to PSI Shetgaokar since it was in January 2001 and I have not carried the station diary of 2001." Admittedly, according to the prosecution, P.W.2 P.S.I. Krishna received the sealed envelope from P.W.6 Head Constable Shetgaokar as is evident from the acknowledgement on Exhibit 9 and also on the basis of the evidence of P.W.2 P.S.I. Krishna. It is argued that this part of the prosecution case that the sealed envelope was handed over to P.W.2 P.S.I. Krishna by P.W.6 H.C. Shetgaokar is completely falsified by the admission of P.W.6 H.C. Shetgaokar that he does not recollect who had handed over the sealed envelope to P.W.2 P.S.I. Krishna.

7. From the evidence of P.W.2 P.S.I. Krishna and corroborated by the acknowledgement on Exhibit 9, the prosecution has established that the sealed envelope was received by P.W.2 P.S.I. Krishna from P.W. 6 H.C. Shetgaokar. Merely because P.W.6 H.C. Shetgaokar, in his deposition, has stated that he does not recollect who had handed over the sealed envelope to P.W.2 P.S.I. Krishna, the prosecution case is not rendered doubtful. P.W.6 H.C. Shetgaokar has explained that since the envelope was delivered in January 2001 and since he does not have the station diary of January 2001 he was not in a position to state who had delivered the sealed envelope. The explanation is neither an afterthought

nor is it false to affect the credibility of the prosecution case. The sealed envelope was in the custody of P.W.6 H.C. Shetgaokar from the time it was handed over to him by P.W.4 P.I. Mhamal till the time it was delivered to P.W.2 P.S.I. Krishna. Thus, there was no opportunity for anyone to have tampered with the contents of the envelope. Thus, according to me, there is no force in the submission of the learned counsel for the accused that the possibility of the sealed envelope could have been tampered with is not ruled out.

8. In respect of the next submission, my attention is drawn to the evidence of P.W.3 Sagar, wherein it is admitted that the right to be searched either before a Magistrate or a Gazetted Officer was communicated to the accused in Hindi. P.W.3 Sagar has further admitted that the actual words used in conveying the right of the accused of being searched in the presence of either a Magistrate or a Gazetted Officer and the actual words used by the accused in declining to exercise the right have not been stated in the panchanama. P.W.4 P.I. Mhamal has stated that the conversation between him and the accused was in Hindi. In the cross-examination he has reproduced the exact words used in communicating the right to the accused. He has also reproduced the actual words used by the accused in declining to exercise the right. From the

evidence of these two witnesses it was urged that there is non-compliance of Section 50 of the N.D.P.S. Act.

9. From the evidence of P.W.4 P.I. Mhamal the exact words used by him to communicate the right to the accused have been brought out in the cross-examination. In the cross-examination the exact words used by the accused in declining to exercise the right have also been brought out. There is no further cross-examination to discredit the assertion of P.W.4 P.I. Mhamal regarding the words used to communicate the right to the accused under Section 50 of the N.D.P.S. Act. The accused in his statement under Section 313 of the Code of Criminal Procedure does not state that he had not understood what was being communicated. In such circumstances, I am not in agreement with the submission of the learned counsel for the appellant that there is non-compliance of Section 50 of the N.D.P.S. Act.

10. With the assistance of the learned counsel for the parties, I have perused the prosecution evidence and the documents tendered in evidence and on perusal of the same no perversity in the appreciation of the evidence by the learned trial Judge is brought to my notice. There is, thus, no merit in the challenge to the conviction and sentence and the appeal, therefore, deserves to be dismissed.

11. Criminal Appeal is dismissed. Since the appellant is in jail, a copy of this Judgment be sent to the appellant.

(P.V. HARDAS)
JUDGE.

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